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Attorneys for Plaintiffs/Counterclaim Defendants
TransPerfect Global, Inc.,
TransPerfect Translations International, Inc., and
Translations.com, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRANSPERFECT GLOBAL, INC.,
TRANSPERFECT TRANSLATIONS
INTERNATIONAL, INC., AND
TRANSLATIONS.COM, INC.,

Plaintiffs,

v.

MOTIONPOINT CORPORATION,

Defendant.

Case No. CV 10-02590 CW

**SECOND AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
OF NON-INFRINGEMENT AND
INVALIDITY OF U.S. PATENT NOS.
7,580,960, 7,584,216, 7,627,479, AND
7,627,817, AND FOR
INFRINGEMENT OF U.S. PATENT
NOS. 6,526,426, 7,207,005, AND
6,857,022**

JURY TRIAL DEMANDED

1 Plaintiffs TransPerfect Global, Inc. (“TransPerfect Global”), TransPerfect Translations
2 International, Inc. (“TransPerfect Translations”), and Translations.com, Inc. (“Translations.com”) (all collectively, “TransPerfect”), by way of this Complaint against Defendant MotionPoint
3 Corporation (“MotionPoint”), state:

4 **NATURE OF THE ACTION**

5
6 1. This is an action brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §
7 2201, for a declaratory judgment of non-infringement and invalidity of United States Patent Nos.
8 7,580,960 (“the ’960 Patent”) (attached as Exhibit A), 7,584,216 (“the ’216 Patent”) (attached as
9 Exhibit B), 7,627,479 (“the ’479 Patent”) (attached as Exhibit C), and 7,627,817 (“the ’817
10 Patent”) (attached as Exhibit D) (collectively, “MotionPoint’s Patents”) under the Patent Laws of
11 the United States, 35 U.S.C. §§ 101, *et seq.*

12 2. This is also an action of patent infringement. On information and belief,
13 Defendant MotionPoint has willfully infringed and continues to willfully infringe, contributes to
14 the infringement of, and/or actively induces others to infringe U.S. Patent Nos. 6,526,426 (“the
15 ’426 Patent”), 7,207,005 (“the ’005 Patent”), and 6,857,022 (“the ’022 Patent”) (collectively,
16 “TransPerfect Global’s Patents”) under the Patent Laws of the United States, 35 U.S.C. §§ 101, *et*
17 *seq.*

18 **THE PARTIES**

19 3. Plaintiff TransPerfect Global is a Delaware corporation with its principal place of
20 business at Three Park Avenue, 39th Floor, New York, New York 10016.

21 4. Plaintiff TransPerfect Translations is a New York corporation with its principal
22 place of business at Three Park Avenue, 39th Floor, New York, New York 10016. TransPerfect
23 Translations is a wholly-owned subsidiary of TransPerfect Global.

24 5. Plaintiff Translations.com is a Delaware corporation with its principal place of
25 business at Three Park Avenue, 39th Floor, New York, New York 10016. Translations.com is a
26 wholly-owned subsidiary of TransPerfect Translations and serves as the technology-centered arm
27 of TransPerfect’s translation business which operates in San Francisco and San Jose, California.

28 6. Upon information and belief, Defendant MotionPoint is a Florida corporation with

1 its principal place of business at 4661 Johnson Road, Suite 14, Coconut Creek, Florida 33073.

2 **JURISDICTION AND VENUE**

3 7. TransPerfect brings this action under the Patent Laws of the United States, 35
4 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271 and under the Declaratory Judgment Act, 28 U.S.C.
5 §§ 2201 and 2202 for a declaratory judgment of non-infringement and invalidity of MotionPoint's
6 Patents under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* Since this action
7 arises under the Patent Laws of the United States, this Court has subject matter jurisdiction
8 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9 8. On information and belief, this Court has personal jurisdiction over MotionPoint
10 because MotionPoint has constitutionally sufficient contacts with California to make personal
11 jurisdiction proper in this Court. In particular, on information and belief, MotionPoint conducts
12 and solicits business within this district and elsewhere in California, and derives substantial
13 revenue from the sales of their products and/or services within this district and elsewhere in
14 California.

15 9. In addition, on information and belief, MotionPoint has done and continues to do
16 substantial business with corporations and entities in the Northern District of California, including
17 the City of Salinas, Orchard Supply Hardware, and Illuminations, Inc. On information and belief,
18 corporations who do business in or with the City of Salinas must be duly licensed to do business
19 in Salinas.

20 10. On information and belief, MotionPoint specifically markets its translation
21 services to customers doing business in California who wish to connect with California's
22 significant Spanish-speaking population. On information and belief, as described in more detail
23 below, MotionPoint has made frequent, widespread allegations or implications of infringement
24 against TransPerfect to potential TransPerfect customers in numerous geographic markets
25 nationwide, including making such allegations or implications to potential TransPerfect
26 customers in the state of California.

27 11. Furthermore, on information and belief, MotionPoint's widespread allegations and
28 implications of infringement in the market were purposefully directed at TransPerfect's business

1 and technology in the Northern District of California. TransPerfect's location at 4340 Stevens
 2 Creek Blvd, Suite 102, San Jose, California 95129 includes a number of engineers who work full-
 3 time on developing and supporting the GlobalLink OneLink product. Mark Hagerty, the Chief
 4 Technology Officer and principal architect of the GlobalLink OneLink product, works out of the
 5 San Jose location and is a resident of the state of California. Furthermore, TransPerfect's location
 6 at 160 Spear St., San Francisco, CA 94105 includes over twenty-five employees who work on site
 7 development, project management, and support of GlobalLink OneLink sites for customers
 8 utilizing the service. MotionPoint's allegations, threats of infringement, and infringement have
 9 caused and will continue to cause harm to TransPerfect and its operations in the Northern District
 10 of California in both San Jose and San Francisco.

11 12. Venue in this judicial district is conferred under 28 U.S.C. §§ 1391(b) and (c).

12 **FACTUAL BACKGROUND**

13 **MotionPoint's Patents**

14 13. The '960 Patent, entitled "Synchronization of Web Site Content Between
 15 Languages," was issued by the United States Patent and Trademark Office and assigned to
 16 MotionPoint.

17 14. The '216 Patent, entitled "Dynamic Language Translation of Web Site Content,"
 18 was issued by the United States Patent and Trademark Office and assigned to MotionPoint.

19 15. The '479 Patent, entitled "Automation Tool for Web Site Content Language
 20 Translation," was issued by the United States Patent and Trademark Office and assigned to
 21 MotionPoint.

22 16. The '817 Patent, entitled "Analyzing Web Site for Translations," was issued by the
 23 United States Patent and Trademark Office and assigned to MotionPoint.

24 17. In TransPerfect's GlobalLink OneLink translation service, TransPerfect's
 25 computers serve as an intermediary between the customer's web site and the internet user who
 26 seeks the translated web content. In this way, TransPerfect's solution acts as a "proxy" for the
 27 requested website in translating the requested content. Translation solutions of this type are
 28 sometimes called "proxy-based" translation solutions.

1 18. On information and belief, MotionPoint and TransPerfect are primary competitors
2 in the market for such “proxy-based” solutions.

3 19. At the present time, an actual controversy exists between MotionPoint and
4 TransPerfect as to whether TransPerfect’s GlobalLink OneLink technology infringes
5 MotionPoint’s patents. On information and belief, MotionPoint routinely states or clearly implies
6 to potential customers, particularly those from whom TransPerfect also seeks business, that
7 MotionPoint has patented the technology underlying TransPerfect’s GlobalLink OneLink service
8 and MotionPoint is the only company permitted to use it. On information and belief, on
9 numerous separate occasions, potential or current customers of TransPerfect have received
10 allegations directly from MotionPoint stating or suggesting that the GlobalLink OneLink product
11 infringes MotionPoint’s patents.

12 20. On information and belief, in the first such instance, a MotionPoint salesperson
13 represented in late November or early December of 2009 to a potential customer of TransPerfect
14 that MotionPoint was the only company legally permitted to provide the kind of translation
15 solution offered both by MotionPoint and TransPerfect. At the time, TransPerfect had offered its
16 GlobalLink OneLink product to the customer. The customer inquired with a member of
17 TransPerfect’s sales team regarding whether MotionPoint’s representation was accurate, and if
18 TransPerfect’s product was legal.

19 21. On information and belief, in the second instance, another potential customer of
20 TransPerfect stated in mid-December of 2009 that, in sales discussions regarding the GlobalLink
21 OneLink product, MotionPoint had raised “some concerns” about TransPerfect violating
22 MotionPoint’s patents with respect to the GlobalLink OneLink product. The customer sought an
23 assurance from TransPerfect that TransPerfect’s GlobalLink OneLink product did not infringe
24 MotionPoint’s patents.

25 22. On information and belief, in the third instance, in mid-January 2010, a member of
26 TransPerfect’s sales team received an inquiry from a then-current MotionPoint customer located
27 in California who was in negotiations with TransPerfect to switch its website translation services
28 to TransPerfect and its GlobalLink OneLink product, asking whether MotionPoint’s patents had

1 any effect on “the technologies that TransPerfect employs” in its translation service.

2 23. On information and belief, in the fourth instance, another potential TransPerfect
3 customer stated to a member of TransPerfect’s sales team, in mid-February 2010, that
4 MotionPoint was claiming that TransPerfect was violating its patents, presumably with respect to
5 the GlobalLink OneLink product. Again, TransPerfect was forced to respond in order to retain its
6 relationship with the customer.

7 24. On information and belief, in the fifth such instance, a potential TransPerfect
8 customer told a member of TransPerfect’s sales team in April of 2010 that MotionPoint had
9 incorporated a slide into their initial sales presentation which stated that MotionPoint had
10 patented the “proxy solution” for translation of websites. On information and belief, MotionPoint
11 was later notified that the potential customer had decided to use TransPerfect’s GlobalLink
12 OneLink service instead of MotionPoint’s translation service. In late May or early June of 2010,
13 the customer informed the member of TransPerfect’s sales team that MotionPoint had sent the
14 customer an email stating that the customer should be careful of working with companies that
15 don’t have a patent on their technology. The potential customer understood this statement as
16 being directed specifically at TransPerfect’s GlobalLink OneLink service.

17 25. MotionPoint has thus repeatedly made TransPerfect’s alleged infringement an
18 issue in the market in which MotionPoint and TransPerfect compete. In particular, on
19 information and belief, MotionPoint has made numerous allegations that TransPerfect’s
20 GlobalLink OneLink infringes one or more MotionPoint patents. MotionPoint’s actions have
21 repeatedly forced TransPerfect to choose between possibly losing business and reassuring
22 customers that TransPerfect’s translation technology does not infringe MotionPoint’s patents.

23 26. MotionPoint has further contacted TransPerfect directly through patent litigation
24 counsel regarding infringement of MotionPoint’s Patents. In a letter dated December 8, 2009
25 (Attached as Exhibit E) to TransPerfect co-CEOs Elizabeth Elting (“Elting”) and Phil Shawe
26 (“Shawe”), Stephen A. Becker (“Becker”), counsel for MotionPoint, stated that MotionPoint had
27 asked the firm of McDermott Will & Emery LLP to “enforce its intellectual property rights
28 aggressively.” Becker advised Elting and Shawe that MotionPoint was the assignee of

1 MotionPoint's Patents, and invited TransPerfect to consider whether, "in view of its activities, it
2 might be infringing" MotionPoint's Patents. Becker asked that TransPerfect respond within
3 approximately three weeks "if you believe that no infringement exists."

4 27. By letter dated February 5, 2010 (Attached as Exhibit F), Mark I. Peroff
5 ("Peroff"), counsel for TransPerfect, responded to MotionPoint's letter and suggested limiting the
6 discussion to a subset of claims from among the four Asserted Patents. Peroff requested that for
7 the subset of claims, MotionPoint provide an analysis of how TransPerfect's translation services
8 infringe. Peroff also noted that a substantial volume of non-patent prior art did not appear to have
9 been brought to the attention of the examiner of MotionPoint's Patents. Further, Peroff notified
10 MotionPoint that MotionPoint's sales team had made statements implying that TransPerfect's
11 translation solution infringed MotionPoint's patents.

12 28. By letter dated February 17, 2010 (Attached as Exhibit G) to Peroff, Becker stated
13 that MotionPoint was not aware of any statements by its sales team regarding infringement.
14 Becker also stated that MotionPoint "has no intention of making infringement accusations in
15 relation to your client at this point in time" and offered to make "internal corrections" should
16 TransPerfect be aware of any specific incidents of allegations of infringement. This
17 representation by MotionPoint's counsel is belied by the fourth instance, described above, in
18 which MotionPoint stated to a potential TransPerfect customer that TransPerfect's technology
19 violated MotionPoint's patents. The conversation between TransPerfect and its potential client
20 took place only days before TransPerfect received MotionPoint's February 17, 2010 letter.

21 29. TransPerfect thus notified MotionPoint on February 5, 2010 that its sales team was
22 inappropriately suggesting to potential customers that TransPerfect's translation services
23 infringed MotionPoint's patents. MotionPoint's counsel responded in its letter dated February 17,
24 2010 that MotionPoint had "no intention of making infringement accusations." And yet, as
25 described in the fifth instance above, in April of 2010 and in May or June of 2010, MotionPoint
26 included statements in its sales presentations, and in an email to a potential customer, implying
27 that TransPerfect's translation services infringe MotionPoint's patents.

28 30. By letter dated May 20, 2010 (Attached as Exhibit H), MotionPoint provided

1 TransPerfect with claim charts setting forth claims from MotionPoint's Patents and MotionPoint's
2 comparison of those claims with materials describing TransPerfect's translation services.

3 31. Therefore, at the present time an actual, active, dispute, case, and controversy
4 exists between TransPerfect, on the one hand, and MotionPoint, on the other, as to the validity of
5 MotionPoint's Patents and the infringement of those patents by TransPerfect's GlobalLink
6 OneLink service. This controversy is of such immediacy and reality to warrant declaratory relief
7 so that the parties may ascertain their rights and duties with respect to MotionPoint's Patents.

8 **TransPerfect Global's Patents**

9 32. On February 25, 2003, U.S. Patent No. 6,526,426 entitled "Translation
10 Management System" was duly and legally issued to David Lakritz. A copy of the '426 Patent as
11 the United States Patent and Trademark Office issued it is attached as Exhibit I and incorporated
12 herein by reference. The '426 Patent has been assigned to TransPerfect Global.

13 33. On April 17, 2007, U.S. Patent No. 7,207,005 entitled "Translation Management
14 System" was duly and legally issued to David Lakritz. A copy of the '005 Patent as the United
15 States Patent and Trademark Office issued it is attached as Exhibit J and incorporated herein by
16 reference. The '005 Patent has been assigned to TransPerfect Global.

17 34. On February 15, 2005, U.S. Patent No. 6,857,022 entitled "Translation Ordering
18 System" was duly and legally issued to Phillip Lee Scanlan. A copy of the '022 Patent as the
19 United States Patent and Trademark Office issued it is attached as Exhibit K and incorporated
20 herein by reference. The '022 Patent has been assigned to TransPerfect Global.

21 35. The '426 Patent and the '005 Patent disclose and claim translation management
22 systems that operate in a computer environment. Generally, the claimed inventions are systems
23 and methods for managing translation of internet websites by automatically detecting when a
24 website has been updated and staging the elements of the website to be translated by translation
25 resources, which can include automated translation tools as well as human translators.

26 36. The '022 Patent discloses and claims translation systems and methods. Generally,
27 the claimed inventions are systems and methods that provide a translation, for example, when a
28 single action translation component is clicked.

37. Defendant MotionPoint is in the business of providing website translation and globalization services. On information and belief, MotionPoint's products and services that provide website translations ("Accused Products") automatically detect when a website has been updated and stage the elements of the website to be translated using translation resources that can include automated translation tools as well as human translators.

38. On information and belief, MotionPoint's website translation products and services have allowed MotionPoint to reach success in the website translation marketplace, capturing hundreds of clients and becoming one of the fastest growing companies in North America.

39. MotionPoint has been and is on notice of TransPerfect Global's Patents. During MotionPoint's prosecution of United States Patent No. 7,580,960 – which purportedly discloses and claims elements of MotionPoint's website translation products and services – the United States Patent and Trademark Office cited both the '005 Patent and the '426 Patent and rejected MotionPoint's proposed claims as anticipated. MotionPoint extensively analyzed TransPerfect Global's Patents in overcoming the rejection. Additionally, on January 14, 2011, TransPerfect identified the '022 Patent to MotionPoint in its Patent Local Rules 3-3 contentions in this case as prior art to MotionPoint's Patents, which purportedly disclose and claim elements of MotionPoint's translation products and services.

COUNT ONE

Declaratory Judgment Of Non-infringement Of The '960 Patent

40. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 31 above, as though fully asserted herein.

41. On information and belief, MotionPoint has alleged or suggested to current or potential TransPerfect customers that that TransPerfect's GlobalLink OneLink product infringes the '960 Patent. TransPerfect now owns and operates Global OneLink technology.

42. TransPerfect has not infringed and is not now infringing directly or indirectly, or has not induced or contributed to and is not now inducing or contributing to the infringement of, either literally or by application of the doctrine of equivalents, any claim of the '960 Patent.

1 Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '216 Patent to be not
2 infringed by TransPerfect and granting TransPerfect all other declaratory relief to which it may be
3 entitled.

4 **COUNT FOUR**

5 **Declaratory Judgment of Invalidity and Unenforceability of the '216 Patent**

6 51. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through
7 31 above, as though fully asserted herein.

8 52. On information and belief, and based on TransPerfect's ongoing investigation to
9 date, the claims of the '216 Patent are invalid because they fail to comply with one or more
10 requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§
11 102, 103, and/or 112.

12 53. TransPerfect seeks a declaratory judgment from this Court under Rule 57 of the
13 Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '216 Patent to be invalid
14 and/or unenforceable for reasons including, but not limited to, failure to comply with one or more
15 of 35 U.S.C. §§ 102, 103, and 112, and granting TransPerfect all other declaratory relief to which
16 it may be entitled.

17 **COUNT FIVE**

18 **Declaratory Judgment of Non-infringement of the '479 Patent**

19 54. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through
20 31 above, as though fully asserted herein.

21 55. On information and belief, MotionPoint has alleged or suggested to current or
22 potential TransPerfect customers that TransPerfect's GlobalLink OneLink product infringes the
23 '479 Patent. TransPerfect now owns and operates the GlobalLink OneLink technology.

24 56. TransPerfect has not infringed and is not now infringing directly or indirectly, or
25 has not induced or contributed to and is not now inducing or contributing to the infringement of,
26 either literally or by application of the doctrine of equivalents, any claim of the '479 Patent.

27 57. TransPerfect seeks a declaratory judgment from this Court under Rule 57 of the
28 Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '479 Patent to be not

1 infringed by TransPerfect and granting TransPerfect all other declaratory relief to which it may be
2 entitled.

3 **COUNT SIX**

4 **Declaratory Judgment of Invalidity and Unenforceability of the '479 Patent**

5 58. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through
6 31 above, as though fully asserted herein.

7 59. On information and belief, and based on TransPerfect's ongoing investigation to
8 date, the claims of the '479 Patent are invalid because they fail to comply with one or more
9 requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§
10 102, 103, and/or 112.

11 60. TransPerfect seeks a declaratory judgment from this Court under Rule 57 of the
12 Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '479 Patent to be invalid
13 and/or unenforceable for reasons including, but not limited to, failure to comply with one or more
14 of 35 U.S.C. §§ 102, 103, and 112, and granting TransPerfect all other declaratory relief to which
15 it may be entitled.

16 **COUNT SEVEN**

17 **Declaratory Judgment of Non-infringement of the '817 Patent**

18 61. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through
19 31 above, as though fully asserted herein.

20 62. On information and belief, MotionPoint has alleged or suggested to current or
21 potential TransPerfect customers that TransPerfect's GlobalLink OneLink product infringes the
22 '817 Patent. TransPerfect now owns and operates the GlobalLink OneLink technology.

23 63. TransPerfect has not infringed and is not now infringing directly or indirectly, or
24 has not induced or contributed to and is not now inducing or contributing to the infringement of,
25 either literally or by application of the doctrine of equivalents, any claim of the '817 Patent.

26 64. TransPerfect seeks a declaratory judgment from this Court under Rule 57 of the
27 Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '817 Patent to be not
28 infringed by TransPerfect and granting TransPerfect all other declaratory relief to which it may be

entitled.

COUNT EIGHT

Declaratory Judgment of Invalidity and Unenforceability of the '817 Patent

65. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 31 above, as though fully asserted herein.

66. On information and belief, and based on TransPerfect's ongoing investigation to date, the claims of the '817 Patent are invalid because they fail to comply with one or more requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

67. TransPerfect seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '817 Patent to be invalid and/or unenforceable for reasons including, but not limited to, failure to comply with one or more of 35 U.S.C. §§ 102, 103, and 112, and granting TransPerfect all other declaratory relief to which it may be entitled.

COUNT NINE

Claim for Infringement of the '426 Patent

68. TransPerfect Global realleges and incorporates by reference paragraphs 1 through 12 and 32 through 39 above, as though fully asserted herein.

69. On information and belief, Defendant MotionPoint is in violation of 35 U.S.C. §271(a) because it has been and is currently infringing, directly and/or indirectly, TransPerfect's '426 Patent by, among other things, making, using, importing, distributing, offering for sale and/or selling the Accused Products without any authority or license.

70. On information and belief, MotionPoint, in violation of 35 U.S.C. §271(b), has actively induced and is currently actively inducing infringement of the '426 Patent by knowingly and intentionally encouraging or aiding third parties to infringe the '426 Patent, without authority or license.

71. On information and belief, MotionPoint, in violation of 35 U.S.C. §271(c), has contributorily infringed and is contributorily infringing '426 Patent by selling, or offering for sale,

1 to third parties the Accused Products especially adapted for use in an infringement of '426 Patent,
2 without authority or license.

3 72. On information and belief, MotionPoint's infringement of the '426 Patent has been
4 and continues to be willful and deliberate.

5 73. Defendant MotionPoint's continued infringement and induced infringement of
6 '426 Patent has damaged and continues to damage TransPerfect Global.

7 74. TransPerfect Global is entitled to recover from MotionPoint all damages is has
8 sustained as a result of MotionPoint's infringement including lost profits and not less than a
9 reasonable royalty as well as treble damages.

10 75. On information and belief, MotionPoint's continued infringement and inducement
11 of infringement of TransPerfect Global's Patents has caused and will continue to cause
12 TransPerfect Global irreparable harm unless enjoined. TransPerfect has no adequate remedy at
13 law.

14 **COUNT TEN**

15 **Claim for Infringement of the '005 Patent**

16 76. TransPerfect Global realleges and incorporates by reference paragraphs 1 through
17 12 and 32 through 39 above, as though fully asserted herein.

18 77. On information and belief, Defendant MotionPoint, is in violation of 35 U.S.C.
19 §271(a) because it has been and is currently infringing, directly and/or indirectly, TransPerfect
20 Global's Patents by, among other things, making, using, importing, distributing, offering for sale
21 and/or selling the Accused Products without any authority or license.

22 78. On information and belief, MotionPoint, in violation of 35 U.S.C. §271(b), has
23 actively induced and is currently actively inducing infringement of the '005 Patent by knowingly
24 and intentionally encouraging or aiding third parties to infringe the '005 Patent, without authority
25 or license.

26 79. On information and belief, MotionPoint, in violation of 35 U.S.C. §271(c), has
27 contributorily infringed and is contributorily infringing '005 Patent by selling, or offering for sale,
28 to third parties the Accused Products especially adapted for use in an infringement of '005 Patent

1 without authority or license.

2 80. On information and belief, MotionPoint's infringement of the '005 Patent has been
3 and continues to be willful and deliberate.

4 81. Defendant MotionPoint's continued infringement and induced infringement of
5 '005 Patent has damaged and continues to damage TransPerfect Global.

6 82. TransPerfect Global is entitled to recover from MotionPoint all damages it has
7 sustained as a result of MotionPoint's infringement, including lost profits and not less than a
8 reasonable royalty, as well as treble damages.

9 83. On information and belief, MotionPoint's continued infringement and induced
10 infringement of the '005 Patent has caused and will continue to cause TransPerfect Global
11 irreparable harm unless enjoined by this Court and TransPerfect has no adequate remedy at law.

12 **COUNT ELEVEN**

13 **Claim for Infringement of the '022 Patent**

14 84. TransPerfect Global realleges and incorporates by reference paragraphs 1 through
15 12 and 32 through 39 above, as though fully asserted herein.

16 85. On information and belief, MotionPoint infringes the '022 Patent – to which
17 TransPerfect Global has all right, title, and interest - by providing website translation and
18 globalization services that include, for example, the "One-Link Deployment process".
19 MotionPoint's website describes the "One-Link Deployment process" by stating that "When a
20 site is language-enabled using our service, a single 'language' link must be added to its
21 navigation bar for users to access the alternate language site." *See*
22 <http://www.motionpoint.com/our-solutions/motionpoint-frequently-asked-questions/general-faqs/>
23 (last visited Oct. 13, 2011). MotionPoint's webpage further states "The 'language' link is a single
24 line of JavaScript code, which we provide to your IT department, along with insertion
25 instructions." *See id.*

26 86. On information and belief, MotionPoint is in violation of 35 U.S.C. § 271(a)
27 because MotionPoint has been and is currently infringing, directly and/or indirectly, one or more
28 claims of TransPerfect Global's '022 Patent by, among other things, making, using, importing,

1 distributing, offering for sale and/or selling website translation and globalization services without
2 any authority or license.

3 87. On information and belief, MotionPoint, in violation of 35 U.S.C. § 271(b), has
4 actively induced and is currently actively inducing infringement of one or more claims of the
5 '022 Patent by knowingly and intentionally encouraging or aiding third parties to infringe the
6 '022 Patent, without authority or license. On information and belief, these third parties include
7 MotionPoint's customers, such as, without limitation, the City of Salinas, Best Buy, and Pizza
8 Hut.

9 88. On information and belief, MotionPoint, in violation of 35 U.S.C. §271(c), has
10 contributorily infringed and is contributorily infringing one or more claims of the '022 patent by
11 providing, selling, or offering for sale, to third parties website translation and globalization
12 services especially adapted for use in an infringement of the '022 Patent, without authority or
13 license. On information and belief, these third parties include MotionPoint customers, such as the
14 City of Salinas, Best Buy, and Pizza Hut.

15 89. On information and belief, MotionPoint's infringement of the '022 Patent has
16 been and continues to be willful and deliberate.

17 90. Defendant MotionPoint's continued infringement, both direct and indirect, of the
18 '022 Patent has damaged and continues to damage TransPerfect.

19 91. TransPerfect Global is entitled to recover from MotionPoint all damages it has
20 sustained as a result of MotionPoint's infringement including lost profits and not less than a
21 reasonable royalty, as well as treble damages.

22 92. MotionPoint's continued infringement, both direct and indirect, of the '022 Patent
23 has caused and will continue to cause TransPerfect irreparable harm unless enjoined by this
24 Court. TransPerfect has no adequate remedy at law.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff TransPerfect prays for the following relief:

27 1. The Court enter judgment declaring that TransPerfect has not willfully or
28 otherwise infringed, contributed to the infringement of, nor induced infringement of any claim of

1 MotionPoint's Patents;

2 2. The Court enter judgment declaring that the claims contained in MotionPoint's
3 Patents are invalid and/or unenforceable;

4 3. The Court enter a judicial determination and declaration that MotionPoint is
5 infringing TransPerfect Global's Patents and that said infringement is and has been willful;

6 4. The Court enter an order permanently enjoining MotionPoint, its officers,
7 directors, employees, attorneys, agents, servants, parties in privity with, and all persons in active
8 concert or participation with any of the foregoing from further acts of infringement, contributory
9 infringement, or inducing infringement of the TransPerfect Global's Patents;

10 5. The Court make an accounting of damages resulting from MotionPoint's
11 infringement of the TransPerfect Global's Patents;

12 6. The Court award TransPerfect Global its damages resulting from MotionPoint's
13 infringement of TransPerfect Global's Patents and the trebling of such damages due to the willful
14 nature of said infringement;

15 7. The Court award TransPerfect Global interest on its damages;

16 8. The Court issue a declaration that this case is "exceptional" under 35 U.S.C. § 285;

17 9. The Court award TransPerfect its costs and expenses for this action, including
18 reasonable attorneys' fees;

19 10. The Court award to TransPerfect further necessary and proper relief under 28
20 U.S.C. § 2202; and

21 11. The Court grant to TransPerfect such other and further relief as the Court deems
22 just and appropriate.

1 Dated: October 13, 2011

Kasowitz, Benson, Torres & Friedman LLP

2
3 By: /s/ Douglas E. Lumish

4 Douglas E. Lumish

5 Jeffrey G. Homrig

6 Joseph H. Lee

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11 TransPerfect Global, Inc.,
12 TransPerfect Translations International, Inc., and
13 Translations.com, Inc.
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DEMAND FOR JURY TRIAL

Plaintiff TransPerfect respectfully requests a trial by jury, pursuant to Fed. R. Civ. P. 38(b), on all issues so triable.

Dated: October 13, 2011

Kasowitz, Benson, Torres & Friedman LLP

By: /s/ Douglas E. Lumish

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